Supreme Court of the United States.

DECEMBER TERM, 1869.

No. 88.

William S. Grant vs. The United States.

SHORT STATEMENT OF THE FACTS.

The petitioner, in the year eighteen hundred and sixty, contracted with the war department, by making proposals which were accepted and acted upon, to furnish and transport certain supplies for the use of the army, which were to be distributed to certain military posts in Arizona, which is shown by exhibits A. and B., (Record pp. 7 and 8) and by the facts found. (Record, p. 24.)

On the 29th of July, 1860, requisition was made upon the petitioner, by the proper officer of the government, for sundry articles, which he at once procured by purchase.

On the 18th of September, 1860, the Secretary of War directed that the articles should be inspected, *in advance*, in New York and Boston. The Secretary also stipulated, that for any temporary transportation between forts "Clark" and "Fillmore," the contractor should be furnished with a proper escort. (Exhibit D., Record, p. 21.)

In December, 1860, Major Eaton, appointed by the War Department for the purpose, made an inspection of sundry articles furnished by the petitioner, at New York, and on the 6th made a report, (Exhibit K., Record, p. 21) in which he approved and accepted the articles as satisfactory, and so certified. (Record, p. 26.) These articles were *marked by him*, or by his direction, with the names of the military posts for which they were intended, including the post "Fillmore," for which the petitioner was entitled to a proper escort. Prior to the inspection as above by Major Eaton, sundry other articles had been inspected by C. Parker, at New York, upon the request of the petitioner, who

adopted this course in consequence of an alleged delay in this respect, on the part of the government to make the inspection. The goods so inspected by Eaton and Parker were transported, en route, for the military posts, so far as Lavacca, at which point they arrived about the 10th of January, 1861, and were there detained for two months and ten days; this detention was caused by the lateness of the season, which rendered the transit impracticable. Subsequently the train reached "Rio Honde," and on the 20th of April, the train and the merchandise were captured and taken away by the armed troops of Texas, then in a state of rebellion and hostility to the United States. (Record, p. 27.)

The order of March 9th, 1860, of John B. Floyd, Secretary, under which the petitioner had acted in supplying, was, on the 3rd of April, 1861, rescinded by his successor, without cause assigned, or reason shown. (Record, p. 28.)

BRIEF OF THE APPELLANT.

I. The rescission of the contract, by the Secretary, without cause shown, and in the absence of any default on the part of the petitioner, entitles him to damages, which are to be determined by an ascertainment of the profits which he would have made if the contract had not been rescinded, or by a consideration of the expenses which the petitioner had incurred in obtaining teams, &c., to enable him to execute his contract.

A. This right of the petitioner is not, and cannot be defeated, as supposed by the court below, because it was not shown in evidence that any supplies were needed by the troops after the attempted rescission of the order under which the petitioner acted; or because the evidence does not show the claimant to have suffered any actual damage or loss of profits, (Record, p. 28) as assumed by the court.

II. The ruling of the Court of Claims, No. 2. That the order of 9th March, 1860, did not require that the supplies should be inspected

at Boston and New York, and any subsequent request or direction in that regard was not obligatory on the complainant, is erroneous. (Record, p. 28.)

A. The case finds that the petitioner submitted to, and acted upon the direction to inspect at the places named. (Record, p. 26.) That it was competent for the Secretary and the petitioner so to agree, and to that extent, to modify the terms of the original order, there can be no doubt; the petitioner having acted upon it, pro tanto, the government cannot be allowed to say it was not obligatory upon the petitioner.

B. The fact found by the Court, ruling No. 3, "That it might well be supposed that the direction of the War Department for the inspection in Boston and New York, was at the instance of the claimant, and for his benefit," cannot effect the petitioner, or destroy his rights under the modification of the contract. (Record, 28.)

III. The inspection by Major Eaton of certain goods, his acceptance thereof, as shown by his certificate, and by marking them for the several military posts, at which they were required, passed the title in and to the goods, so inspected and marked. The second ruling of the Court in relation to this part of the case, is erroneous.

A. After inspection and marking, the goods remained in the possession of the claimant for transportation; the completion of which was prevented by the public enemy, and consequently the loss must be borne by the government.

IV. The capture of the goods by an armed force, in rebellion, acting with intent to subvert the government, under the facts found in the case, is a delivery to the United States of the goods ordered.

A. The relation of the parties, the purpose of the seizure made by the enemy, the use for which the supplies were intended, taken in connection with the fact that the petitioner as a contractor with the government, must be regarded as in its service, and was rightfully in the face of the enemy — conduce to show that the capture, in this case, by an armed enemy of the government, stands upon grounds peculiar and distinct from those which may or may not apply to a capture under other circumstances.

B. The provision contained in the letter of the Secretary, dated 18th September, 1860, which provides that the petitioner, under certain circumstances, which might increase the danger of transportation, shall be furnished with a proper escort, shows the intention of the parties, that the government should assume the risk of capture by the enemy. (Record, pp. 21, 22.)

C. Capture of the goods of an enemy, in a neutral ship is delivery, and the carrier is entitled to his freight.

V. The duties of the government and its citizens are reciprocal — protection by the one, obedience by the other. Upon principle, in all cases in which private property is seized by a public enemy, without any default of the owner, the government is bound to sustain the loss.

Vattel on Law of Nations, p. 403. The author concedes the principle above stated, although he adds, "But no action *lies* against the State for misfortunes of this nature." The author does not deny the right, although he denies the remedy. He says, "The sovereign, indeed, ought to show an equitable regard for the sufferers, if the situation of his affairs will admit of it."

A. Under the circumstances of this case, (see position 4,) it is respectfully submitted the petitioner has the right, and is entitled to a remedy.

C. B. GOODRICH, for Appellant.

Supreme Court of the United States.

DECEMBER TERM, 1868.

No. 88.

William S. Grant vs. The United States.

SES RELIED UPON BY PLAINTIFF IN SUPPORT OF THE THIRD POSITION UPON HIS BRIEF.

Story on Sales, Sec. 311, *A*, 3*rd Edi.* A constructive delivery may e made by the doing of any act expressive of an intention to surrender the buyer, the property in the goods sold. The affixing of particular arks to the goods sold, will be sufficient to vest the property in the vendee.

Thompson vs. *Gray*, 1 *Whea.* 75. If on sale of personal property one of the articles be set apart and marked as property of vendee, the property passes, though the article remain with the vendor as security for the purchase money on the whole.

United States vs. *Lutz*, 2 *Blatch*, 383–4. When property is purchased abroad by the United States and is shipped to this country, to be delivered to the United States on payment of the purchase money, and is landed under the general permit of the collector, *and placed in a public store*, the legal right of property therein, is vested in the United States, subject only to the vendor's lien for the purchase money.

A. The relation of the parties, the purpose of the seizure made by the enemy, the use for which the supplies were intended, taken in connection with the fact that the petitioner as a contractor with the government, must be regarded as in its service, and was rightfully in the face of the enemy — conduce to show that the capture, in this case, by an armed enemy of the government, stands upon grounds peculiar and distinct from those which may or may not apply to a capture under other circumstances.

B. The provision contained in the letter of the Secretary, dated 18th September, 1860, which provides that the petitioner, under certain circumstances, which might increase the danger of transportation, shall be furnished with a proper escort, shows the intention of the parties, that the government should assume the risk of capture by the enemy. (Record, pp. 21, 22.)

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Supreme Court of the United States.

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CASES RELIED UPON BY PLAINTIFF IN SUPPORT OF THE THIRD POSITION UPON HIS BRIEF.

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Lawrence vs. *Minturn*, 17, *How*. 100. Consignee of goods under a bill of lading, is prima facie the legal owner, and may sue the carrier for non-delivery.

Low vs. *Andrews*, 1 *Story Rep*. 38. Putting goods on board a vessel, and transmitting bills of lading, vests the property in the consignee, though the bills of lading do not arrive.

Grove vs. *Brien*, 8, *How*. 429, 438. Delivery to a carrier presumed to have been assented to, and passes the title to the property at once. The effect of a consignment of goods generally, is to vest the property in the consignee.

United States vs. *Delaware Insurance Co*. 4 *Wash*. 418. It is no objection to vesting right of property in consignee for value, or whose debt it is to secure, that the goods by agreement are to be at the risk and for account of the consignor.

As to the goods inspected and accepted by Major Eaton, Grant had performed everything, on his part to be performed, which was essential to pass the title. Subsequently they were in his possession as carrier —to this extent the original contract was severed by the acts of the parties. Upon the inspection and acceptance, by Major Eaton, of the goods marked, the United States acquired the right to insist upon the transportation and delivery, of the specified goods to, and at, the military posts, for which they had been marked, defeasible only by the act of God, or by the public enemy.

C. B. GOODRICH.

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cases cited by DM

SUPREME COURT OF THE UNITED STATES.

No. 88.

DECEMBER TERM, 1868.

WM. S. GRANT, APPELLANT, vs. THE UNITED STATES, APPELLEE.

APPEAL FROM THE COURT OF CLAIMS.

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rief for the United States by T. Lyle Dickey, Ass't Att'y Gen.

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contract there was, it merely entitled Grant to "furnish all the lies that *might be needed* at certain military ports in Arizona, until 6th of March, 1862," at a certain price, (page 24, record.) It *ere* appears that any *such supplies were needed* at any of those posts the rescinding of the order or contract. The rescinding of the :, therefore, was after *the full execution* of the order, inasmuch as *e supplies needed*, &c., had *already* been furnished, and *nothing* remained to be done under the contract. If the order of the Secretary of War was in fact a violation of a contract which claimant then had, the order was void as against the claimant, and left his contract in the eyes of law as valid as if the order of rescinding had never been made; and before claimant can recover he must show a state of case on which he could recover under his contract, throwing the rescinding order out of consideration. Claimant makes no case even for nominal damages.

Unless claimant can show something more than nominal damages he has no such "claim" as the Court of Claims has jurisdiction to try.

II. The claim for the loss of *private property* taken in war by the enemy cannot be sustained on principles of law, and is no such claim as the Court of Claims has jurisdiction to try and allow.

III. The inspection of goods of a contractor, thousands of miles from the place of delivery, does not vest the property so inspected in the United States.

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APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States by T. Lyle Dickey, Ass't Att'y Gen.

I. Claimant alleges that the rescinding of the contract by the U. S. without his fault entitles him to damages, to be measured by the profits he would have made under the contract.

If contract there was, it merely entitled Grant to "furnish all the supplies that *might be needed* at certain military ports in Arizona, until the 26th of March, 1862," at a certain price, (page 24, record.) It *nowhere* appears that any *such supplies were needed* at any of those posts after the rescinding of the order or contract. The rescinding of the order, therefore, was after *the full execution* of the order, inasmuch as *all the supplies needed*, &c., had *already* been furnished, and *nothing* remained to be done under the contract. If the order of the Secretary of War was in fact a violation of a contract which claimant then had, the order was void as against the claimant, and left his contract in the eyes of law as valid as if the order of rescinding had never been made; and before claimant can recover he must show a state of case on which he could recover under his contract, throwing the rescinding order out of consideration. Claimant makes no case even for nominal damages.

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II. The claim for the loss of *private property* taken in war by the enemy cannot be sustained on principles of law, and is no such claim as the Court of Claims has jurisdiction to try and allow.

III. The inspection of goods of a contractor, thousands of miles from the place of delivery, does not vest the property so inspected in the United States.

IV. Lastly, claimant insists that the United States is liable for the extra expense of keeping the means of transportation at Lavaca, waiting for the arrival of the army supplies, and for the loss of horses, mules and oxen for want of forage while waiting for grass; and lastly for the loss by capture at Rio Honde, April 20, 1861.

All this claim rests upon the position, that all these consequences resulted, without the fault of claimant, from delays caused by the culpable neglect of the United States to inspect the goods at an earlier day.

The facts in the record do not sustain the claim.

a. The record does not show any contract on the part of the government to inspect at Boston or New York. The Secretary of War, long after the contract was made, made an order in the interests of claimants that inspection might be made before shipment, but claimants were not required to submit to such inspection. The order was a gratuitous effort on the part of the Secretary of War to do claimants a favor.

b. If the notice of 22d September, 1860, be regarded as a contract, that the goods should be inspected at Boston or New York, that contract did not require inspection until the goods were all substantially ready, and the United States notified of the fact of readiness, or of the time and place where inspection was desired, and there is no finding of the court, that after such notice and actual readiness the United States culpably delayed the inspection. This court will not weigh circumstantial evidence to see whether the Court of Claims ought, on the evidence, to have made such a finding or not.

No culpable delay of inspection is found, nor is it found that the delay of shipment caused the loss; nor is it found that the loss was without the fault of claimant—See McConihe *vs.* N. Y. & E. R. R. Co., 20, N. Y., (6 Smith,) 495.

c. That this court will not weigh evidence reported, but will only pass upon the law applicable to the ultimate facts or law relating to the competency of evidence.—See Rules of Court of Claims, page 15; 1 Wallace, 99; 6 Wallace, 111, 112.